



**IT IS ORDERED as set forth below:**

**Date: March 30, 2012**

**Paul W. Bonapfel**  
**U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

IN THE MATTER OF:	:	CASE NUMBER: 11-40364-PWB
	:	
JAMES HOMER SNEED,	:	
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Debtor.	:	BANKRUPTCY CODE
	:	
	:	
RICK BROWN,	:	
	:	
	:	
Plaintiff	:	
	:	
	:	
v.	:	ADVERSARY PROCEEDING
	:	NO. 11-4044
JAMES HOMER SNEED,	:	
	:	
	:	
Defendant.	:	

**ORDER GRANTING  
MOTION FOR DEFAULT JUDGMENT**

The Plaintiff alleges that he is the attorney for the Debtor's former spouse and that, pursuant to the Corrected Final Judgment and Decree of divorce entered in the Superior Court of

Whitfield County, Georgia, in *Sneed v. Sneed*, Civil Action No.: 2007-CI-2014 (attached as Exhibit A to the Complaint), the Debtor was required to pay attorney's fees in the amount of \$13,000 to him. (Complaint, ¶¶ 7-9). In his complaint,<sup>1</sup> the Plaintiff seeks a determination that the attorney fee award is excepted from dischargeability pursuant to 11 U.S.C. § 523(a)(5) because it is a "domestic support obligation."

A domestic support obligation is defined as follows, 11 U.S.C. § 101(14A):

a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is--

(A) owed to or recoverable by--

- (i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or
- (ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of--

- (i) a separation agreement, divorce decree, or property settlement agreement;
- (ii) an order of a court of record; or
- (iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.

---

<sup>1</sup>It appears that pages 6 and 7 of the Complaint (and interspersed with the Corrected Final Judgment and Decree) are attached in error. At the top of each of the pages is an identifier for a document filed in case 03-5053-pwb. They do not relate to this proceeding. As a result, the Court will disregard pages 6 and 7 of the Complaint.

An attorney's fee awarded to the attorney for a debtor's former spouse pursuant to a divorce decree is not explicitly identified as alimony, maintenance or support within the definition of "domestic support obligation." Nevertheless, the focus of a court's determination as to the "nature of the obligation is on the intent underlying the award." *Engram v. MacDonald (In re MacDonald)*, 194 B.R. 283 (Bankr. N.D.Ga. 1996).

In *Strickland v. Shannon (In re Strickland)*, 90 F.3d 444 (11<sup>th</sup> Cir. 1996), the Eleventh Circuit addressed the issue of whether an award of attorney's fees constitutes "support" under 11 U.S.C. § 523(a)(5). Noting that although federal law, not state law, controls the court's inquiry, the Eleventh Circuit observed that state law "does provide guidance in determining whether the obligation should be considered in the nature of 'support' under § 523(a)(5)." *Strickland*, 90 F.3d at 446.

In *Strickland*, the debtor sought unsuccessfully to modify child custody and child support provisions of a divorce judgment. The state court denied his requests and ordered the debtor to pay his former spouse's attorney fees. The *Strickland* court concluded that, under Florida law, a former spouse is entitled to an award of attorney's fees in a modification action based upon relative need and ability to pay. Therefore, in awarding attorney's fees to the debtor's former spouse, the state court had necessarily considered and determined the needs and abilities of the debtor and his former spouse. Accordingly, the Eleventh Circuit held that an award of attorney's fees award "arising from a post-dissolution custody action constitutes 'support' for the former spouse under 11 U.S.C. § 523(a)(5) where . . . the award is based on ability to pay." *Id.* at 447.

Like Florida law, Georgia law also provides that an award of attorney fees in a divorce proceeding is based upon the relative need and ability to pay of the parties. Georgia Code § 19-6-2

(emphasis added) provides:

(a) The grant of attorney's fees as a part of the expenses of litigation, made at any time during the pendency of the litigation, whether the action is for alimony, divorce and alimony, or contempt of court arising out of either an alimony case or a divorce and alimony case, including but not limited to contempt of court orders involving property division, child custody, and child visitation rights, shall be:

(1) Within the sound discretion of the court, except that the court shall consider the *financial circumstances of both parties* as a part of its determination of the amount of attorney's fees, if any, to be allowed against either party . . . .

The Corrected Final Judgment and Decree reflects that the Superior Court of Whitfield County, Georgia entered its judgment after final hearing and after the presentation of evidence by counsel for the parties. (Complaint, Exh. A, at 1). The Debtor was ordered to pay alimony to his former spouse in the form of a lump sum payment of \$25,000 and \$1,500 per month for eighty-four months. (Complaint, Exh. A, at 2-3). Thus, the Court may assume that the Superior Court considered the financial circumstances of both parties in requiring the Debtor to pay the fees of the attorney for his former spouse. Accordingly, the Court concludes that the requirement that the Debtor pay the attorney's fees of the Plaintiff constitutes "support" for the Debtor's former spouse for purposes of § 523(a)(5) and is excepted from discharge. Based upon the foregoing, it is

ORDERED that the Plaintiff's motion for default judgment is granted.

End of Order

Distribution List

Terry Haygood  
Law Offices of Terry Haygood  
401 Broad Street, Ste. 102  
Rome, GA 30161

Rick Brown  
Law Offices of Rick Brown  
P.O. Box 671  
Dalton, GA 30722-0671

James R. Marshall  
Suite 203  
120 South Park Square  
Marietta, GA 30060

James Homer Sneed  
2210 Highway 225 N  
Chatsworth, GA 30705